
By Bryant Storm, J.D.

Seventeen attorneys general (AGs) filed a reply brief in support of their motion to intervene in *House v. Price*, a case brought by the House of Representatives challenging the subsidy payments made to insurers through the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148). The reply brief restates the AGs’ justification for joining the litigation, noting that the current parties—the House and the Trump administration—are colluding to undermine the law.

**Case background.** The case, now referred to as *House v. Price* (formerly, *House v. Burwell*), was brought by House Republicans challenging the legality of cost-sharing subsidies established under the ACA. Summary judgment was granted to the House but, pending appeal, subsidies were permitted to continue during the abeyance (see *Court puts cost-sharing appeal on hold, awaits possible Trump policy*, December 7, 2016). The abeyance was granted after the election. A March 2, 2017, order by the court continued the abeyance for 90 days and ordered a status report by May 22, 2017. On May 22, 2017, after fifteen state AGs filed a motion to intervene, the parties requested another 90 day delay in the case (see *States seek to intervene, parties ask for more time in ACA subsidies case*, May 24, 2017).

**State allegations.** The AGs note that while the executive branch formerly defended its authority and obligation to make cost-sharing subsidy payments under the ACA, the Trump Administration "now prefers that this appeal make no progress toward clarifying its responsibility under current law." The reply brief notes that while the Administration is free to change its position and even dismiss the appeal, the Administration may not use the abeyance "as part of an essentially collusive strategy to undermine, rather than clarify or implement, current law." The state AGs note that they have grounds for intervention—they already been harmed by the uncertainty surrounding the litigation and would be harmed further if the injunction takes effect.